**Highlights of the Draft RFP Comments on**
**Contractor Human Resources Management**
**(3/19/09)**

1. The following provisions be included and made an integral part of the draft Request for Proposal (RFP) and/or the final RFP and resulting contract issued by DOE site for the D&D project at the DOE site in Piketon, Ohio.

**A. Employment Continuity**

In keeping with the intent of the Section 3161 of the Fiscal Year 1993 Defense Authorization Act to minimize the impact of changes to the workforce at DOE Sites, the contractor will retain the existing (non-managerial) workforce, maintain existing wage and benefit programs, provide pension continuity; and recognize the collective bargaining agreement for the hourly workforce (consistent with the requirements found in the DOE RFP for Miamisburg-Mound and the ERMC contract at Fernald). The local workforce is highly trained to work in the nuclear industry and has consistently operated the facility in a safe, secure, efficient and cost effective manner. Any disruption in transitioning the workforce could result in compromising the health and safety of the community.

**Response:**

(1) The solicitation provides for multiple rights of first refusal and preferences in hiring for workers at the Portsmouth Gaseous Diffusion Plant Site. The rights of first refusal and preferences in hiring will ensure that the current trained and qualified local workforce will continue to operate, maintain, and remediate the facilities safely, securely, efficiently, and effectively.

(2) The requirements of Section 3161 of the Fiscal Year 1993 Defense Authorization Act are specifically recognized in the solicitation. See Clause H.3(A)(3)(c) – (e), Clause H.9 Workforce Restructuring, and Section I Contract Clauses: DEAR 952.226-74 Displaced Employee Hiring Preference, and DEAR 970.5226-2, Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.

(3) The solicitation provides for continuity of benefits under the existing defined benefit multi-employer pension plan (Bechtel Jacobs Corporation (BJC) Multi-Employer Pension Plan) and the Multiple Employer Welfare Arrangement (MEWA), and continues to provide market based benefit plans. In addition, the Contractor is required to provide all benefit plans and pay consistent with all applicable law, including the Service Contract Act (SCA), any applicable collective bargaining agreement(s), terms of the benefit plans, and terms and conditions of the contract. See Clauses H.4 Employee Compensation: Pay and Benefits, and H.5 Special Provisions Applicable to Workforce Transition and Employee Compensation: Pay and Benefits.

(4) The solicitation at Clause H.8 (C) requires in part that, consistent with applicable labor law and regulations for work being performed at the Portsmouth Gaseous Diffusion Plant Site by members of United Steel, Paper and Forestry, Rubber,

Manufacturing, Energy, Allied Industrial and Service Workers Union (USW), the Contractor recognize USW as the collective-bargaining representative and to bargain in good faith to a collective bargaining agreement that gives due consideration to applicable terms and conditions of the existing collective bargaining agreement(s).

2. Is the lead sponsor to administer the MEPP and MEWA for all of the existing participating companies at Portsmouth, Paducah and Oak Ridge as BJC does today?

**Response:** Yes.

3. The goal of the employee hiring preferences detailed here is appropriate and laudable, but the multi-tiered, multi-company, multi-criteria, and ongoing preference structure described in the RFP is likely to be unworkable in practice. A more workable approach would be for DOE to define "Portsmouth Site Workers" and to assign preference after transition to 1) current site workers, and 2) former site workers in that order.

**Response:** No change to the solicitation.

4. In a number of places this clause [H.3] references employees "who have been identified as being at risk of being involuntarily separated" but the contract does not specify who identifies these employees as such and on what basis.

**Response:** The current employer determines and identifies the employees that will be at risk of being involuntarily separated and the basis for identifying those employees at risk of being involuntarily separated. The solicitation will be revised to clarify this issue.

5. The clause includes provisions requiring the contractor to provide a preference for employees who do not meet the qualifications for a position but who "agree to become qualified and can become qualified by the commencement of active employment." This provision does not address what happens if they are not so qualified at the requisite date, it only requires that such employees agree to be come qualified and that it is possible that they could do so, not that they actually become qualified. DOE should clarify its position, as costs incurred as a result of a failure to comply with the hiring preference are unallowable (per H.3(B)).

**Response:** No change to the solicitation. The allowability of costs associated with the Contractor's compliance with this requirement will be based upon the specific facts and circumstances regarding the Contractor's decision.

6. The contract provides that, after the workforce transition period, the contractor must give a right of first refusal in hiring for vacancies in non-managerial positions. The language is unclear as to whether the contractor would be prohibited from promoting within to fill vacancies. Please confirm that vacancies filled from within are not subject to this right of first refusal.

**Response:** The solicitation will be revised.

7. Will DOE include an advance understanding regarding HR Costs in a personnel appendix included as an attachment to Section J?

**Response:** No.

8. The definition of "LPP Incumbent Contractor" includes its first and second tier subcontractors. The first part of the definition of "LPP Incumbent Employees" includes "regular employees on the rolls of the LPP Incumbent Contractor". Based on the definition above, this would automatically include all employees of the first and second tier subcontractors. However, the second part of the definition of "LPP Incumbent Employees" includes only the "Grandfathered Employees on the rolls of the LPP Incumbent Contractor's first and second tier subcontractors…." These definitions are inconsistent and should be clarified since it appears that DOE does not intend for all employees of LPP first and second tier subcontractors to be included in the definition of "LPP Incumbent Employees". This same inconsistency appears in the definitions of "TPMC Employees", and "UDS Employees".

**Response:** The solicitation will be revised.

9. Does DOE plan to incorporate the new clause required by Executive Order 13495 and redraft H.3 to be consistent with the new clause?

**Response:** Pursuant to Section 10 of the Executive Order, "the order and the clause contained therein apply to solicitations issued on or after the effective date for the action taken by the Federal Acquisition Regulatory Council…." The Federal Acquisition Regulatory (FAR) Council in accordance with the Executive Order is required to issue regulations within 180 days of the date of the Executive Order. To date, the FAR Council has not issued such regulations.

10. The hiring preference can be applicable to those "who agree to become qualified and can become qualified by the commencement of active employment under this Contract with the training provided pursuant to Clause H.5 (A)." Can we suggest that this be a provisional preference? Whether or not the individual agrees to become qualified, the test of actual "permanent" employment status should be the successful completion of the training program.

**Response:** No change to the solicitation.

11. This provision is redundant. H.3(A)(3) says the same thing more clearly.

**Response:** No change to the solicitation.

12. This provision should be modified to exclude individuals who were terminated for cause. The current language excludes those who are "barred from seeking employment at the Portsmouth Gaseous Diffusion Plan Site by the terms of employee waivers or releases of claims they executed", but such waivers or releases would frequently not be available for those who were simply terminated for cause.

**Response:** No change to the solicitation.

13. Does DOE intend to provide redacted information on incumbent LPP, USEC and TPMC employees by classification, for purposes of determining "equivalent" pay for the Offeror's proposed compensation structure and estimate?

**Response:** DOE will post appropriate information.

14. Does DOE intend to provide the most recent BenVal Study and any corrective action plan being worked; or at least provide information as to where the current plans stand versus comparators? If the current administrator is pursuing a corrective action plan, will costs associated with completing that corrective action plan should not be borne by the D&D contractor.

**Response:** No change to the solicitation. DOE does not publicly release specific contractor Employee Benefits Value Studies (Ben-Val Study) or any corrective action plans. Costs associated with a corrective action plan will be reimbursed in accordance with the terms and conditions of the applicable contract of the contractor incurring the cost.

15. Is it DOE's intent to exclude any prior contractor service for non-grandfathered employees with regards to benefit participation and vesting eligibility?

**Response:** No. The solicitation will be revised.

16. Will DOE provide the 2008 funding level of the BJC MEPP?

**Response:** Information concerning the funding level of the BJC MEPP and other DOE contractor defined-benefit pension plans are provided by the plan administrators to plan participants in accordance with applicable law.

17. DOE has specified very stringent time periods to accomplish some rather major changes regarding pension plans, and some of the necessary actions require approvals, etc. from Government agencies that are not within the Contractor's control. Are the specified time periods possible? Keeping in mind the distinction between the award date and the date when the performance period begins (not to mention the potential for a GAO Protest), would it make more sense for the time periods to be measured from the date of Contract Performance Period initiation following Transition?

**Response:** No change to the solicitation. The time periods are appropriate.

18. Does the Contractor have the flexibility to meet the requirement to establish a "training program" by establishing a tuition assistance program (subject to Contracting Officer approval) to reimburse employees for training not to exceed six months in duration and $5,000 in cost provided by a certified academic institution?

**Response:** No. No change to the solicitation.

19. The Union acknowledges and appreciates the Department's detailed provisions in this draft RFP regarding workforce transition, including the hiring preferences (discussed further in the following paragraph), the detailed provisions regarding pay and benefits,

and the other protections regarding the existing workforce at this site. However, we are concerned about the lack of a specific reference – here and in other portions of Section H – to Section 633 of the Energy Policy Act of 2005, 42 U.S.C. § 2297h-8(a) (hereinafter "Section 633"). This statute specifically incorporates the concept and definition of "grandfathered employees" for purposes of the BJC multi-employer pension and welfare plans that are cited in the draft RFP and of other requirements regarding the continuity of benefits for the existing workforce at Portsmouth and Paducah. The Union suggests that the provisions of this statute be referenced specifically in the final version of the RFP.

**Response:** The Contract requires the Contractor to comply with all applicable law, which includes 42 U.S.C. 2297h-8(a), Section 633 of the Energy Policy Act of 2005. However, in order to ensure that the Contractor understands that Section 633 applies, the aforementioned statute will be added to Section J, Attachment 2, List A, List of Applicable Law and Regulations.

20. The Union generally welcomes the hiring preference provisions of Section H.3, which sets forth a reasonable system of preferences based on skills and experience, as well as site-wide seniority. Local 689 believes hiring preferences will promote stability within the local community while providing the successful contractor with a skilled, motivated and committed workforce to ensure successful performance. However, in the Union's view, the requirement for a "hiring preference" does not go far enough; the experienced employees of the incumbent contractor and other contractors at this site should be given a right of first refusal for those jobs that involve similar job duties to their current or most recent positions. Such a process would ensure that qualified, experienced individuals are given the first chance to fill these jobs, ensuring a continuity of the workforce that is in the employees' interests and, equally important, will provide the contractor and the DOE with the highest quality, best-trained and most safety-experienced employees.

**Response:** The solicitation will be revised.

21. This provision specifies that the new contractor shall pay employees hired from LPP, TPMC and/or USEC wages equivalent to the pay at those companies. However, this provision fails to mention employees of Uranium Disposal Services (UDS), even though they are entitled to certain hiring preferences. The Union assumes that this is an oversight and that this section will be revised to make clear that UDS employees who are hired under this contract will be provided pay equivalent to their current wages.

**Response:** The solicitation will be revised to include UDS.

22. In addition, this provision ultimately may be unwieldy to administer because – unlike in previous workforce transitions from one contractor to another – in this situation the new contractor may be hiring individuals from several different incumbent employers. Although the Union contracts are similar across the Portsmouth, they are not identical because they necessarily have been the result of individual negotiations with separate companies. The Union proposes that the new contractor be required to provide all employees initially (before bargaining with Local 689 begins) with the *most favorable* wages, benefits and other terms and conditions of employment applicable under *any* of the Portsmouth CBAs.

**Response:** The Department recognizes that there may be differences among the collective bargaining agreements between the different employers at the Portsmouth Gaseous Diffusion Plant Site and the USW. However, the Department cannot dictate the wages, benefits, and other terms and conditions which were bargained for by the USW with a specific employer.

23. Local 689 is concerned about the provisions of this subsection requiring the successful contractor to make a periodic employee benefits value study to compare the value of the employee benefits at this location to other groups and, in particular, to "align" employee benefits with some parameters yet to be determined. First, while the draft RFP provides for separate cost study comparisons for grandfathered and non-grandfathered employees, the Union submits that it is inappropriate to require the contractor to attempt to make benefit comparison for the grandfathered employees, since this group is entitled under Section 633 to certain specified benefits that are not provided to many employees in the private sector or even under other DOE contracts. Because there are no comparable employee groups, there can be no reasonable comparators for purposes of evaluating the grandfathered employees' benefit costs.

Similarly, the use of a broad, national survey such as the one prepared by the U.S. Chamber of Commerce – and, in particular, the attempt in the draft RFP to "correct" the benefit value if it is more than five percent above the cost for the comparator group – would be inappropriate. First, the Union suggests that it may be difficult to find a reasonably proximate comparator group even for the non-grandfathered employees. Among other reasons, any comparator group would need to focus on unionized workers, a segment that traditionally has been able to obtain greater benefits than non-unionized workers. Furthermore, a comparison to a broad cross-section of employees fails to take into account the special concerns of workers in a nuclear facility regarding ongoing health care. Second, the use of a relatively small, five-percent variance from some national average (an "average" that necessarily would include employee groups that receive *no* benefits at all) to trigger a "correction" or "alignment" of the contractor's benefit costs artificially lowers standards for such benefits for the Portsmouth workers.

Finally, Local 689 believes that the requirement for the contractor to prepare a "corrective action plan" regarding benefit costs for approval by the Contracting Officer is at least potentially violative of the provisions of Section 633 as well as of the collective bargaining rights of the employees under other provisions of this draft RFP and under the National Labor Relations Act.

For all of these reasons, the Union urges the DOE to remove the provisions of subsection H.4(F)(1)-(6) from the draft RFP.

**Response:** The solicitation requires the Contractor to comply with all applicable law, including the National Labor Relations Act (NLRA), 42 U.S.C. 2297h-8(a), (Section 633 of the Energy Policy Act of 2005). Additionally, Clause H.4(E)(2) requires the Contractor to comply with any applicable collective bargaining agreement(s), applicable law, and the terms and conditions of the Contract. Further, Clause H.5(B)(1), Benefit Plans, requires the Contractor to provide Grandfathered Employees pension and other benefits in accordance with applicable law, applicable collective bargaining agreement(s), and the provisions of the Bechtel Jacobs Company (BJC) Multi-Employer Pension Plan (MEPP), the BJC Multiple Employer Welfare Arrangement (MEWA), and other existing benefit plans for Grandfathered Employees.

Separate Employee Benefits Value (Ben-Val) studies and Employee Benefits Cost Study Comparisons for Grandfathered Employees and Non-Grandfathered Employees are required in recognition of the differences in the types of benefits to be provided by the Contractor for Grandfathered Employees and Non-Grandfathered Employees.

Section 633 does not prohibit the solicitation's requirement for the Contractor to submit Ben-Val studies or corrective action plans. Any proposed changes to the benefit plan(s) resulting from the corrective action plans are required to be approved by the Contracting Officer as well as be in accordance with applicable law and collective bargaining agreement(s).

24. This provision limits cost reimbursement for post-retirement benefits (PRBs) to plans that include DOE-approved requirements for a minimum period of continuous employment service of not less than five years under a DOE cost-reimbursement contract immediately prior to retirement. As noted, many individuals who are entitled to the hiring preference under this RFP and who might become employees of the contractor are eligible to receive PRBs through the multi-employer welfare plan that has been administered by Bechtel Jacobs. To the Union's knowledge, this requirement for covered employment immediately prior to retirement is not contained in the provisions of the BJC plan; therefore, it should be removed from the draft RFP, at least as regards the grandfathered employees who are entitled to receive benefits under that plan.

**Response:** The solicitation will be revised.